REMARKS/ARGUMENTS

Claims 23, 24, and 26-33 are pending; claims 1-22 and 25 have been canceled previously. No substantive amendment of claims is presented. The amendment to claims 24, 28, and 29 are for consistency with antecedent basis among the claims, namely, to agree with the "array of media" recited in claim 23. It is submitted that this amendment places the claims in better condition for appeal. Thus, entry of the amendments is proper, and entry of these amendments to claims 24, 28, and 29 is hereby requested.

In the pending Office Action designated "final", the Examiner withdrew the previous rejection of claims, but applied newly-cited art to Kitamura et al. (U.S. 6,854,034) and rejected claims 23-27, 29, and 30 under 35 U.S.C. § 102(e) as being anticipated by the Kitamura patent. Claim 28 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Kitamura in view of Napolitano et al. (U.S. 6,301,605). It is submitted that the claimed invention is not anticipated and is patentable over the references of record.

The independent claims in this application include claims 23, 29, and 30. The Examiner asserted that Kitamura teaches all of the claimed features of these independent claims. One of the features of the claimed invention is a data storage system that selects a data path between storage media and a plurality of I/O ports such that the data path is selected to provide sufficient data speed. Claim 23 refers to an allocator that allocates a data path "based upon a data rate capability of said one data path". Claim 29 recites that a data path "is selected to provide sufficient data speed" to accommodate a desired QoS, and claim 30 recites establishing a data path through a network connection to a storage device based upon "the data rate capability of the network connection."

That is, all of the independent claims include a limitation that recites selection of a data path based on the speed of the network connection. Kitamura has no provision for selecting from among data paths based on their connection speed.

The discussion in Kitamura that was relied upon by the Examiner relates to selecting a suitable storage device based on the data access rate of the device. For example, at col. 6, lines 33-42, Kitamura describes specifying a storage device for connection in terms of the

device access rate, such as whether the device is a low-speed device or a high-speed device. In Kitamura, there is no ability for knowing the connection path speed, although the device access rate is used. The pending application describes knowing both: In the present application, a configuration table that lists communication path speed 404 is shown in Figure 4, and a configuration table that lists device access rate 504 is shown in Figure 5. The corresponding discussion in text occurs at the paragraph bridging page 7 and page 8, and at the middle paragraph of page 8. Nowhere in Kitamura is there discussion of the connection speed between the storage devices and the host computer. Therefore, Kitamura cannot provide the claimed feature of selecting a connection path based on speed of the connection. As a result, Kitamura cannot anticipate the claimed invention. Therefore, claims 23, 29, and 30 are not anticipated, and neither are the claims dependent thereon (claims 24, 26-28, 31-33).

With respect to the Section 103 rejection of claim 28, it is submitted that neither Napolitano nor any of the other cited art can make up for the deficiencies of Kitamura. Any such proposed combination would not be successful, because Kitamura has not ability to know, or do anything with, connection path speed. Even if such a combination could be implemented, it would still fail to teach or suggest the claimed path selection to storage devices based on connection speed of the path itself, because Kitamura does not operate in such fashion. Moreover, there is no demonstration that the references themselves would contain a motivation for making the proposed combination. Therefore, no *prima facie* case of obviousness has been provided, and claim 28 is not rendered obvious in view of the proposed combination.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. Withdrawal of the rejection and allowance of the pending claims are respectfully requested.

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If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6100.

Respectfully submitted,

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